



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 18, 1995

Ms. Melissa Winblood
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR95-631

Dear Ms. Winblood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23273.

The City of El Paso (the "city") received a request for emergency medical service ("EMS") records concerning a deceased patient. The requestor has notified the city of a claim on behalf of the deceased's parents for personal injuries suffered by the deceased while in police custody. You do not state whether the requestor has provided an authorization, nor have you provided a copy of an authorization signed by the parents to release medical records. You have, however, included supplemental briefs relating to other open records requests previously submitted to this office by the city regarding evidence the city may require a personal representative of a deceased patient to provide in order to prove his/her status under section 773.091 of the Health and Safety Code. We therefore assume here that the requestor's clients, parents of the deceased, claim to be his personal representatives.

You have provided copies of the requested documents and argue that the information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 773.091 of the Texas Health and Safety Code and sections 552.103, 552.107, 552.108, 552.111 and 552.117 of the Government Code.¹

¹You have not, however, explained how sections 552.107, 552.108, 552.111 and 552.117 of the Government Code apply to the documents at issue. A governmental body must explain how an exception applies to the records requested. Gov't Code § 552.301(b). If a governmental body does not establish how and why an exception applies to the requested information, the attorney general has no basis on which to

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 773.091(b) of the Health and Safety Code provides in pertinent part:

Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

However, the Emergency Medical Services Act also provides under section 773.092(e):

Communications and records that are confidential under this section may be disclosed to:

....

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093.

Section 773.093, regarding consent, provides the following:

(a) Consent for the release of confidential information must be in writing and signed by the patient . . . or a *personal representative* if the patient is deceased. [Emphasis added.]

In your supplemental briefs, you assert that an individual claiming to be the personal representative of the deceased must supply copies of letters testamentary or of administration in conjunction with section 3(aa) of the Texas Probate Code to prove his status as representative. However, section 773.091 of the Health and Safety Code does not define the term "personal representative." Moreover, section 773.091 does not require proof that a party authorizing release of records is in fact a personal representative of the deceased.

In a recent decision, Open Records Decision No. 632 (1995), we concluded that the term "personal representative" as used in section 773.093 of the Health and Safety

(Footnote continued)

pronounce it protected. Open Records Decision No. 363 (1983). As you have not explained how the exceptions noted above apply to the requested documents, they may not be withheld pursuant to sections 552.107, 552.108, 552.111 or 552.117 of the Government Code.

Code, signifies "personal representative" as defined in section 3(aa) of the Probate Code. However, the Probate Code does not necessarily require that all personal representatives bear letters testamentary or of administration. Open Records Decision No. 632 (1995) at 4. Thus, you may *accept*, but may not *require* letters of testamentary or of administration as a means of establishing the status of an individual as personal representative of the deceased. *Id.* In this case, we are unable to determine from the materials submitted whether the requestor, an attorney representing the parents of the deceased, has provided an authorization for release of EMS records signed by the parents claiming to be the legal representatives of the deceased. If you have such an authorization, we believe this is sufficient proof of the parents' personal representative status as provided by section 773.093(a) of the Health and Safety Code.² See also Open Records Decision No. 598 (1991) (assuming without information to contrary that deceased's widow is his personal representative for purposes of the Medical Practice Act and Health & Safety Code provisions).

You claim that the requested records should be withheld pursuant to section 552.103 of the Government Code. Section 552.103(a) excepts information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To be excepted under section 552.103(a), information must relate to litigation that is pending or reasonably anticipated. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the

²Although you do not raise it, we note that section 4.01(e) of the Medical Liability and Insurance Improvement Act establishes procedures for obtaining medical records relating to claims of medical liability. See V.T.C.S. art. 4590i, § 4.01 Section 4.01(e) provides that:

notwithstanding Section 5.08, Medical Practice Act . . . or any other law, a request for medical records of a deceased person or person who is incompetent shall be deemed to be valid if accompanied by an authorization signed by a parent, spouse or adult child of the deceased or incompetent person.

Id. § 4.01(e). While this provision applies only to claims of medical liability, this provision lends support to our conclusion that you may not require letters testamentary or of administration in order to release the EMS records in this instance.